IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8684 of 1996

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M P DAVE

Versus

RESEARCH OFFICER & ANR.

Appearance:

1. Special Civil Application No. 8684 of 1996

MR IS SUPEHIA for the Petitioner

Respondent No. 1 SERVED

MR MS RAO, AGP for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/06/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a retired employee of the respondent No.1 - Institute, challenges the order dated 3rd October, 1994 and the consequent recovery made on 18th January, 1995. Facts leading to the present petition are as under :

The petitioner was appointed in the Gujarat Engineering and Research Institute, the respondent No.1 herein (hereinafter referred to as 'the Institute') as Clerk-cum-Typist in the year 1960. He retired from service as Clerk-cum-Typist in the year 1996. On 5th July, 1991 the State Government passed a resolution conferring benefit of higher grade upon the Government servants who have to suffer stagnation on account of want of promotional avenues or limited scope of promotion. The said Resolution was adopted by the Institute and was made applicable to its servants. Pursuant to the said Resolution, by order dated 20th October, 1992, the petitioner had been given the benefit of three higher grade scales. It was stipulated that the amount of difference of salary payable pursuant to the said order shall be deposited in the Provident Fund account under a separate head and shall continue to be deposited till 31st March, 1997. It was further stipulated that in the event of modification of the said scheme, such modification shall be binding to the petitioner. The said scheme was revised by the State Government by its Resolution dated 16th August, 1994. Under the said Resolution the petitioner was not entitled to the second and the third higher grade scale. Accordingly, the impugned order came to be made on 3rd October, 1994. By impugned order grant of the benefit of second and third higher grade scale was withdrawn and the excess amount was ordered to be recovered. Pursuant to the said order, by order dated 19th January, 1995, a sum of Rs.77,305=00 came to be withdrawn from the Provident Fund account of the petitioner. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr.Supehia has appeared for the petitioner and has submitted that the impugned order suffers from the vice of violation of principle of natural justice and it requires to be quashed and set aside on that ground alone. He has submitted that before withdrawing the benefit granted to the petitioner, the petitioner was not given opportunity of representation or of hearing. He has also submitted that it is not true that under the Resolution dated 16th August, 1994 the petitioner is not entitled to the benefit of the second

and the third higher grade scale. He has submitted that even under the Resolution of 16th August, 1994 the petitioner's position remained unchanged and she is entitled to receive the aforesaid monetary benefits of three higher grade scales. He has further submitted that in any view of the matter the recovery could not have been made from the Provident Fund account of the petitioner. Once the payment was made pursuant to the order made by the Institute, even if it is found to be erroneous, no recovery can be permitted to be made from the petitioner. Mr.Supehia has, therefore, prayed that the amount recovered from the petitioner be ordered to be refunded. In support of these contentions he has relied upon the provisions of Section 10 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and the judgment of the Hon'ble Supreme Court in the matter of Gorakhpur University and others v/s. Dr.Shitla Prasad Nagendra and others [AIR 2001 SCW 2819]. He has also relied upon the judgments in the matters of R.S.Chhaya v/s. State of Gujarat [1992(1) GLH 484] and of P.H.Reddy & Ors. v/s. N.T.R.D. & Ors. [2002(2) SLR 694].

It is not disputed that the petitioner had not been given opportunity of representation or of hearing before the benefit granted to him was withdrawn. The petition, therefore, requires to be allowed for violation of principle of audi alteram partem. I, therefore, do not deal with the other contentions raised by Mr.Supehia.

For the aforesaid reasons the impugned order dated 3rd October, 1994 and the action of recovery of the sum of Rs.77,305=00 are quashed and set aside. The aforesaid sum of Rs.77,305=00 recovered from the petitioner shall be refunded to him on or before 31st August, 2004. In the event the Institute fails to repay the aforesaid amount by 31st August, 2004 the Institute shall be liable to pay interest @ 6% per annum on the said amount from the date of this order till the date of payment. Rule is made absolute with costs.

It is clarified that this order shall not preclude the Institute from reconsidering the matter and ordering recovery of the excess amount, after affording the petitioner an opportunity of making representation against the intended action and of hearing, if desired. If any order adverse to the petitioner is made on reconsideration the petitioner shall be entitled to challenge the same on all available grounds.

The Registry is directed to send the writ

forthwith.

(Ms. R.M.Doshit, J.)

/sakkaf